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**IN THE  
COURT OF APPEALS OF INDIANA**

ROBERT SMITH.

Appellant-Plaintiff,

VS.

MIAMI CORRECTIONAL FACILITY,

JANE/JOHN DOES, JOANNA \_\_\_\_\_, )

HEIDI \_\_\_\_\_, TRACI \_\_\_\_\_, )

OFFICER SCHWARTZ, and DR. MYERS, )

Appellees-Defendants.

No. 52A04-0610-CV-621

APPEAL FROM THE MIAMI CIRCUIT COURT

The Honorable Rosemary Higgins Burke, Judge

Cause No. 52C01-0607-CT-341

**August 21, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Robert Smith (“Smith”), an inmate at the Miami Correctional Facility, by counsel, appeals the trial court’s dismissal pursuant to Indiana Code § 34-58-1-2, which provides a screening procedure for offender litigation, of his complaint, which alleges a 42 U.S.C. § 1983 claim based on the Eighth Amendment against certain staff members of the correctional facility. Concluding that Smith’s complaint with respect to “Jane/John Does,” Officer Schwartz, and Dr. Myers sets forth a claim upon which relief may be granted but that the complaint does not set forth sufficient factual allegations concerning all of the material elements of an Eighth Amendment claim against the remaining defendants, we affirm in part, reverse in part, and remand.

## **Facts and Procedural History**

On July 17, 2006, while incarcerated at the Miami Correctional Facility, Smith, by counsel, filed a Complaint against Miami Correctional Facility, “Jane/John Does,” and staff members “Joanna\_\_\_\_, Heidi\_\_\_\_, Traci\_\_\_\_, Officer\_\_\_\_Schwartz, and Dr.\_\_\_\_Myers,”<sup>1</sup> Appellant’s App. p. 10, alleging a 42 U.S.C. § 1983 claim based on the Eighth and Fourteenth Amendments to the United States Constitution. The Complaint sets forth, in pertinent part:

2. The Defendants are Jane/John Does, Joanna\_\_\_\_, Heidi\_\_\_\_, Traci\_\_\_\_, Officer\_\_\_\_Schwartz, and Dr.\_\_\_\_Myers, all of whom were staff at the Miami Correctional Facility at all material times to this Complaint. The Defendants, and each of them, are named in their individual capacities as persons acting under color of law pursuant to 42 U.S.C. § 1983. While acting in the course of, and within the scope of their employment, the individually named Defendants failed to provide the Plaintiff with prompt and appropriate medical treatment, thereby violating the Plaintiff’s rights

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<sup>1</sup> Smith’s complaint leaves blanks for either the first or last names of these defendants.

under the Eighth and Fourteenth Amendments of the United States Constitution.

3. The Plaintiff began his stay at the Miami Correctional Facility on or about March 1, 2005. Throughout 2005, the Plaintiff suffered from serious medical conditions, including heart problems for which he requires chronic care. Throughout his stay at the Miami Correctional Facility, the Plaintiff has experienced repeated incidences where he has not been provided prompt and appropriate access to medical services and/or medication. . . .

4. As of November 3, 2005, the Plaintiff had medication that he was to be allowed to carry with him, but this medication was confiscated from him by Correctional Officer Schwartz. The confiscated medication [was] not turned over to medical staff nor the Plaintiff's counselor, with the result that the medication was not accessible to Plaintiff when needed. It was not until November 15, 2005, that a new order was obtained permitting the Plaintiff to carry the necessary medications with him.

5. On or about November 27, 2005, the Plaintiff experienced severe back spasms, and had to be placed in a wheel chair. He was then seen by a jail nurse, who said he would be permitted to see the jail doctor (Dr. Myers) the following day. He was not seen the next day by the doctor, however.

6. On or about November 30, 2005, the Plaintiff began having chest pains and shortness of breath. The Plaintiff was seen by jail medical staff, and told that he would be seen by the doctor the following day. Again, the jail physician failed to see the Plaintiff. Again, Defendant staff John/Jane Does, and/or Defendant Dr. Myers failed to take appropriate steps [to] ensure the Plaintiff was seen by a physician. As a consequence, the Plaintiff, [sic] was never seen by Dr. Myers on December 1, 2005.

7. On or about December 5, 2005, the Plaintiff spoke to facility personnel about the problems he was having with their medical department. The Plaintiff's medical packet was subsequently checked, and it was discovered that the medication that Dr. Myers had put an order in for on November 15, 2005, was never even ordered.

8. As a result of the individually named Defendants' failure to provide the Plaintiff with prompt, appropriate, and accessible medical services (including medication), the Plaintiff suffered physical pain and discomfort, as well as mental anguish, emotional distress, and other damages and injuries. The actions of the Defendants, and each of them furthermore was the proximate cause of the Plaintiff's injuries.

9. The Defendants' actions were intentional, wanton, and in reckless disregard of the Plaintiff's federally protected civil rights under 42 U.S.C. § 1983, and the Eighth and Fourteenth Amendments to the United States Constitution, thereby warranting an imposition of punitive damages.

*Id.* at 10-12.

Pursuant to Indiana Code § 33-37-3-3,<sup>2</sup> Smith filed a statement of trust account information with his Complaint. On that same day, the trial court determined that Smith did not provide the court with the correct trust account information because he did not include information for the six months immediately preceding the submission of his Complaint. As a result, the trial court entered an order requiring Smith to provide it with the necessary trust account information within thirty days.

On September 5, 2006, the trial court dismissed Smith's Complaint without prejudice because he did not provide the court with the necessary trust account information. In response to the trial court's dismissal, Smith filed a Motion to Set Aside Order of September 5, 2006 and Reinstate Case. In its September 26, 2006, order, the trial court acknowledged receipt of the proper trust account information but "dismis[s]e[d] this cause pursuant to Ind. Code § 34-58-1." *Id.* at 9.<sup>3</sup> Specifically, the trial court dismissed Smith's claim against Miami Correctional Facility because, as an agent of the State, the facility is not amenable to suit under 42 U.S.C. § 1983. The trial court dismissed Smith's claim against Joanna, Heidi, and Traci because Smith "made no

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<sup>2</sup> Indiana Code § 33-37-3-3 requires that "the offender shall obtain from the appropriate official of the correctional facility or facilities at which the offender is or was confined a certified copy of the prisoner's trust fund account statement for the six (6) months immediately preceding submission of the complaint or petition."

<sup>3</sup> The record is unclear as to whether the trial court reinstated Smith's case before the court dismissed it again in its September 26, 2006, order.

factual allegations against any of these individuals in his complaint.” *Id.* at 7. The trial court dismissed Smith’s claim against “Jane/John Does” because he “failed to state a claim that [they] violated any rights under the Eighth Amendment.” *Id.* at 9. The trial court dismissed Smith’s claim against Officer Schwartz because Smith “failed to state a claim against him that rises to the level of cruel and unusual punishment” because, although Smith alleged Officer Schwartz confiscated his medication, “[n]o allegations were made regarding the type of medication, its necessity or efficacy, or any risks incurred if the medicine was not immediately available.” *Id.* at 8. Finally, the trial court dismissed Smith’s claim against Dr. Myers because there were no allegations “as to whether Dr. Myers knew of his medical condition, or of Dr. Myers[’] intentions (if any) in not seeing Mr. Smith on December 1, 2005.” *Id.* Smith now appeals.

Because the trial court dismissed Smith’s Complaint after conducting its review pursuant to Indiana Code chapter 34-58-1, there is no respondent and, therefore, no appellee. Accordingly, the Indiana Attorney General filed a notice of noninvolvement in this matter.

### **Discussion and Decision**

On appeal, Smith contends that the trial court erred in dismissing his Complaint against the individual staff members of the correctional facility pursuant to Indiana Code § 34-58-1-2.<sup>4</sup> Indiana Code § 34-58-1-1 provides, “Upon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action

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<sup>4</sup> Smith does not appeal the dismissal of his claim against Miami Correctional Facility.

until the court has conducted the review required by section 2 of this chapter.” Section 2, in turn, provides, in pertinent part:

(a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:

- (1) is frivolous;
- (2) is not a claim upon which relief may be granted; or
- (3) seeks monetary relief from a defendant who is immune from liability for such relief.

(b) A claim is frivolous under subsection (a)(1) if the claim:

- (1) is made primarily to harass a person; or
- (2) lacks an arguable basis either in:
  - (A) law; or
  - (B) fact.

Ind. Code § 34-58-1-2. If a court determines that a claim may not proceed under Section 2, “the court shall enter an order: (1) explaining why the claim may not proceed; and (2) stating whether there are any remaining claims in the complaint or petition that may proceed.” Ind. Code § 34-58-1-3. In reviewing the dismissal of an offender’s claim or complaint pursuant to Indiana Code § 34-58-1-2, we apply a *de novo* standard of review. *Smith v. Maximum Control Facility*, 850 N.E.2d 476, 479 (Ind. Ct. App. 2006). “Like the trial court, we look only to the well-pleaded facts contained in the complaint or petition.” *Id.* “Further, we determine whether the complaint or petition contains allegations concerning all of the material elements necessary to sustain a recovery under some viable legal theory.” *Id.*

On appeal, Smith argues that the trial court erred in dismissing his Complaint, which alleges a § 1983 claim against all of the defendants, pursuant to Indiana Code § 34-58-1-2. There are two basic elements of a § 1983 claim. *Severson v. Bd. of Trustees of Purdue Univ.*, 777 N.E.2d 1181, 1196 (Ind. Ct. App. 2002), *trans. denied*. “To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) the defendant deprived the plaintiff of a right secured by the Constitution and the laws of the United States, and (2) the defendant acted under color of state law.” *Id.* (quoting *Reed v. City of Chicago*, 77 F.3d 1049, 1051 (7th Cir. 1996)). The starting point for a § 1983 analysis is to identify the specific constitutional right that was allegedly violated. *City of Hammond v. Cipich ex rel. Skowronek*, 788 N.E.2d 1273, 1279 (Ind. Ct. App. 2003), *trans. denied*. Here, Smith argues that the defendants violated his rights under the Eighth Amendment to the United States Constitution by “fail[ing] to provide [him] with prompt and appropriate medical treatment.”<sup>5</sup> Appellant’s App. p. 10.

Prisoners of this state are entitled to adequate medical care under the Eighth Amendment to the United States Constitution. *Ratliff v. Cohn*, 693 N.E.2d 530, 544 (Ind. 1998), *reh’g denied*. To establish an Eighth Amendment violation, Smith “must demonstrate that the prison officials are ‘deliberately indifferent’ to [his] ‘serious’ medical needs . . . .” *Id.* at 544 (quotation omitted). “Serious medical need” includes “[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly

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<sup>5</sup> In his complaint, Smith also alleges that the defendants violated his Fourteenth Amendment rights. However, on appeal, Smith only addresses his Eighth Amendment rights. See Appellant’s Br. p. 11 (“[The] legal theory, of course, is cruel and unusual punishment under the Eighth Amendment of the United States Constitution—depriving Plaintiff of medical care/services, causing him physical pain and mental anguish/emotional distress.”). Therefore, we, too, only address the Eighth Amendment.

affects an individual's daily activities; or the existence of chronic and substantial pain . . . .” *Id.* at 544 n.25.

Looking only to the well-pleaded facts contained in Smith's Complaint with respect to Joanna, Heidi, and Traci, we note that other than the second paragraph of the Complaint—where he introduces all of the defendants—Smith does not refer to Joanna, Heidi, and Traci individually by name. In three paragraphs, however, Smith generally refers to “Defendants,” which arguably includes Joanna, Heidi, and Traci. Specifically, in paragraph 2, Smith alleges that the “Defendants” failed to provide him with prompt and appropriate medical treatment, thereby violating his Eighth and Fourteenth Amendment rights. Appellant's App. p. 10. In paragraph 8, Smith alleges, “As a result of the individually named Defendants' failure to provide [him] with prompt, appropriate, and accessible medical services (including medication), the Plaintiff suffered physical pain and discomfort, as well as mental anguish, emotional distress, and other damages and injuries.” *Id.* at 12. Finally, in paragraph 9, Smith alleges that the “Defendants' actions were intentional, wanton, and in reckless disregard of his federally protected civil rights under 42 U.S.C. § 1983, and the Eighth and Fourteenth Amendments to the United States Constitution . . . .” *Id.*

These are not factual allegations against Joanna, Heidi, and Traci so much as they are conclusory statements that the “Defendants” violated Smith's constitutional right to adequate medical care. As demonstrated below, Smith makes specific factual allegations in his Complaint against “Jane/John Does,” Officer Schwartz and Dr. Myers. No such allegations were made against Joanna, Heidi, and Traci. Indiana Trial Rule 8(A), this



State’s notice pleading provision, requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Although the plaintiff need not set out in precise detail the facts upon which the claim is based, she must still plead the operative facts necessary to set forth an actionable claim.” *Trail v. Boys & Girls Clubs of Nw. Ind.*, 845 N.E.2d 130, 135 (Ind. 2006). Because Smith does not set forth sufficient factual allegations that Joanna, Heidi, and Traci were deliberately indifferent to his serious medical needs—the elements of an Eighth Amendment claim—we affirm the trial court’s dismissal of the claim against them pursuant to Indiana Code § 34-58-1-2.

We reach a different conclusion with respect to “Jane/John Does,” Officer Schwartz, and Dr. Myers, however. As for “Jane/John Does,” in addition to naming them in the second paragraph of his Complaint—where he introduces all of the defendants—Smith refers to them in paragraph 6, wherein he alleges that on November 30, 2005, he began having chest pains and shortness of breath but that “Defendant staff John/Jane Does . . . failed to take appropriate steps [to] ensure the Plaintiff was seen by a physician.” Appellant’s App. p. 11.

As for Officer Schwartz, in his Complaint, Smith generally alleges that he “suffered from serious medical conditions, including heart problems for which he requires chronic care.” *Id.* In paragraph 4, Smith specifically alleges:

As of November 3, 2005, the Plaintiff had medication that he was to be allowed to carry with him, but this medication was confiscated from him by Correctional Officer Schwartz. The confiscated medication [was] not turned over to medical staff nor the Plaintiff’s counselor, with the result that the medication was not accessible to Plaintiff when needed.

*Id.*

As for Dr. Myers, in paragraph 5, Smith alleges that on or about November 27, 2005, he experienced back spasms and was seen by a jail nurse, “who said he would be permitted to see the jail doctor (Dr. Myers) the following day. He was not seen the next day by the doctor, however.” *Id.* In paragraph 6, Smith alleges that on or about November 30, 2005, he began experiencing chest pains and shortness of breath and was told that he would be seen by the jail doctor the following day; however, Dr. Myers did not see Smith on December 1, and therefore, Dr. Myers failed to take appropriate steps to ensure that he was assisted by a physician in a time of need. In paragraph seven, Smith alleges that the medication Dr. Myers supposedly ordered for him was never ordered.

Applying a *de novo* review, we conclude that Smith’s Complaint contains allegations against “Jane/John Does,” Officer Schwartz, and Dr. Myers, which, if proven, could establish that they were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. We therefore reverse the trial court’s dismissal of Smith’s claims against “Jane/John Does,” Officer Schwartz, and Dr. Myers pursuant to Indiana Code § 34-58-1-2.

Affirmed in part, reversed in part, and remanded.

SULLIVAN, Sr. J., and ROBB, J., concur.